IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 7TH NOVEMBER 2007 / 16TH KARTHIKA 1929

CRP.No. 850 of 2007()

AS.142/2003 of Ist ADDL.DISTRICT COURT, THRISSUR
OS.2857/2000 of III ADDL. M.C.,THRISSUR

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REVN. PETITIONER: RESPONDENT/DEFENDANT:

M/S. KANJIRAPPILLY AMUSEMENT PARK &
HOTEL (P) LTD., KANJIRAPPILLY, P.O. PARIYARAM,
CHALAKKUDY VIA., THRISSUR, REP. BY ITS
JOINT MANAGING DIRECTOR, SIMON, AGED 44,
S/O. FRANCIS, FATHIMA NAGAR, THRISSUR.

BY ADV. SRI.G.SREEKUMAR (CHELUR)

RESPONDENT: RESPONDENT/PLAINTIFF:

M/S. FATHIMA TILES,
MARATHAKARA, OLLUR, REP. BY ITS MANAGING PARTNER,
V.S.KIKKILLY, RESIDING AT CHIRAYATH HOUSE,
MARATHAKARA, THRISSUR.

BY ADV. SRI.P.SANTHOSH (PODUVAL)
SMT.R.RAJITHA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 07/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.Krishnan, J.

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C.R.P.No.850 of 2007

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Dated this the 7th day of November, 2007.

ORDER

Heard both sides. This revision petition is preferred against the judgment of the First Additional District Judge, Thrissur in A.S.No.142 of 2003. It was preferred against the judgment and decree in O.S.No.2857 of 2000 of the IIIrd Additional Munsiff, Thrissur. The suit was one for realisation of an amount of Rs.12,398.40, which according to the plaintiff, was due as the balance price towards supply of tiles to the defendant. Defendant on the other hand would contend that only two loads were received and in anticipation of further supply the defendant issued cheque for Rs.25,000/- and therefore lodged a counter claim for realisation of Rs.13,000/- and odd. The court below, on consideration of the entire materials found that the case of the plaintiff is true and also held that the counter claim is not correct. Now it is against the decision in the suit, that this revision

petition is preferred.

2. Learned counsel for the revision petitioner has formulated four points as substantial questions of law. First point is regarding the validity of the power of attorney and point Nos. 2 to 4 are about the facts. So far as the power of attorney is concerned, Ext.A1 is the power of attorney executed by the Managing Partner of the Firm in favour of PW1. Ext.A2 is produced to show that the partnership is registered. Ext.A3 is the reconstituted deed of partnership. There are three persons and the second partner is none other than the person, who had signed and verified the plaint. So, there is no basis for the contention that the power of attorney cannot be executed. It is the Managing Partner, who under law, is entitled to execute the power of attorney in favour of PW1 and so there is no substantial question of law on the point.

3. So far as point Nos. 2 to 4 are concerned, they are on basical facts. According to the plaintiff, after supplying the load for Rs.7,748/- and Rs.7592/- again on 8.7.2000 another load was supplied by bill No.2008 for which Rs.22,058.40 is due from the defendant after adjusting Rs.25,000/- received as price for the

tiles so supplied. The suit is instituted for the balance amount.

4. Both the courts below had concurrently appreciated the facts as well as documentary and oral evidence and arrived at the correctness of the same. It is now well settled that the court which is exercising almost second appellate jurisdiction cannot disturb the concurrent findings of facts. It is further held that even if a different view is possible, the second appellate court cannot substitute its view for the view of the two concurrent findings of facts. Therefore, the contention that there is factual mistake is also incorrect. The courts below had appreciated the evidence and have arrived at a decision correctly, which is neither perverse nor illegal. Therefore, this Court exercising the jurisdiction under revision cannot interfere with the finding of the courts below.

Therefore, the Civil Revision Petition lacks merits and it is dismissed.

M.N.Krishnan,
Judge.

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